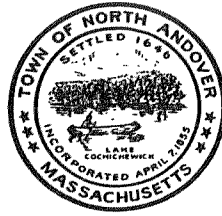


Town of North Andover
ZONING BOARD OF APPEALS

Approved
Aug
11
15

Albert P. Manzi III, Esq. Chairman
Ellen P. McIntyre, Vice-Chairman
Richard J. Byers, Esq. Clerk
D. Paul Koch Jr. Esq.
Allan Cuscia



Associate Member
Michael P. Liporto
Deney Morganthal
Doug Ludgin
Zoning Enforcement Officer
Gerald A. Brown

DRAFT MINUTES

Tuesday, June 23rd, 2015 at 7:30 PM

Town Hall 120 Main Street, North Andover, Massachusetts

Members present: Albert P. Manzi, Ellen McIntyre, Rick Byers, Allan Cuscia and D. Paul Koch Jr

Associate Member: Doug Ludgin, and Deney Morganthal

Also in attendance: Gerald Brown, Zoning Enforcement Officer, Eric Kfoury, Director of Economic and Community Development and Tom Urbelis, Town Counsel

Excused absence: Michael Liporto

Pledge of Allegiance

Manzi called the regular meeting to order at 7:36

Manzi stated that he will be going out of order tonight and first wanted to discuss some procedural matters as it will relate to any of tonight's hearings that may be continued. Manzi went on to say that he did receive some communication from the Town Manager's Office today and wanted to inform everyone that Doug Ludgin has been elevated from an Associate Member to a Regular Member, as of the upcoming August meeting. Manzi went on to say that regrettably we will have 2 Associate Member vacancies, since Rick Byers and Michael Liporto requested not to be reappointed to the Board. Manzi also stated that he has been reappointed as a Board Member. Manzi wanted it noted that both Byers' and Liporto's service to this Board has been appreciated.

Acceptance of Minutes May 12, 2015

McIntyre made the motion to approve the Minutes

Cuscia second the motion.

Those voting in favor to approve the minutes were Manzi, McIntyre, Koch, Cuscia, and Ludgin

Committee Reports

Merrimack Valley Planning Commission and the Housing Partnership Committee

McIntyre had nothing to report on the Housing Partnership.

Byers stated to the Board that the MVPC do not meet in June, July or August, so he has nothing new to report. Since Byers will no longer be a member of the ZBA Board, he stated that he will still relate any correspondences to the Board's Assistant.

Discussions

Requesting for extension at 288 Sutton Street Lots 1, 2, 3, 4 and 5

(Notice of Decision 2013-006, 2013-007, 2013-008, 2013-009 and 2013-010)

Manzi and Byers stated that they would recuse themselves from this Discussion.

Manzi turned the gavel over to McIntyre, who will be the Acting Chairman for this Discussion.

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Brian Vaughn representing the applicant walked up to the podium stating that he is here with Steve Smolak, the principle for this project. Vaughn brought the Board up to speed on the history of the project. They are requesting that the Board in accordance with Section 10.31.(3) of the Zoning Bylaws to grant a one year extension for the Special Permit. This Special Permit was granted for 288 Sutton Street Lots 1 through 5 in August of 2013. Now they are coming up on the 2 year deadline for the Special Permit.

Vaughn spoke of the various reasons for the need for the extensions, such as necessary utility work and also creating access to the subdivision.

Smolak also stated that they have the necessary approvals from Conservation and Planning.

McIntyre asked if the Board or anyone else had any questions or concerns.

Cuscia made a motion to Grant the request for the 1 year extension for the Special Permits for Lots 1 through 5, located at 288 Sutton Street.

Ludgin second the motion

All in favor to grant the extension for the Special Permit McIntyre, Koch, Cuscia, Ludgin, and Moganthal

New Public Hearing

Special Permit Zoning District, R-4, Janet Eichler 11 Tyler Road (Map 33 Parcel 7)

Petition 2015-004

Manzi returned to Chair the rest of the meeting.

Rick Byers opened up the Public Hearing

Janet Eichler, applicant and owner of the property located at 11 Tyler Road walked up to the podium and stated that she is requesting a Special Permit to the Board, to allow for her to have a Family Suite that would be attached to her home at 11 Tyler Road. She would like her parent's or possible her adult son to occupy the proposed Family Suite.

McIntyre asked Brown if they are violating any setbacks or non-conformities with the addition. Brown responded no.

Manzi thought it looked like a straight forward application.

Koch had concerns with the size of the addition, for the family suite, since he felt that it may be over the 25% of the gross floor area, Koch stated that would be in violation of the Zoning Bylaws. Brown disagreed stating that if it was, it is just a very diminutive difference.

The Board discussed this in detail, some of the Board members agreed with Brown and some agreed with Koch. Brown stated that Eichler could build this addition with just a Building Permit; she just needs to come to the Board for the Special Permit for the Family Suite. Ludgin agreed with Brown's statement.

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Manzi wanted to discuss with the Board the merits of this project.

Manzi asked if anyone in the audience was for or against this Family Suite. No one from the audience got up to speak.

Manzi stated to the Board that they may be able to cure this size issue, if they feel that this is diminutive in size.

Cuscia felt that because the original house is small, the applicant should not be punished, because the applicant may be a bit over the 25%. Cuscia agreed with Brown that the applicant could go into the Building Department and get a Building Permit for the addition; she wouldn't even have to come in front of us if she didn't add a stove.

Brown felt that some of the Board members may be over interpreting the bylaws. Brown stated that the applicant is trying to do the right and legal thing to get a Special Permit for a Family Suite.

McIntyre stated she could come back to us requesting a Variance.

The Board explained to Eichler the rules and regulations that go along with this Special Permit, and also when the home is sold that the Family Suite Special Permit goes away.

Manzi stated that parking does not seem to be a problem and the proposed addition and project fits in with the neighborhood. Manzi explained to Eichler the Family Suite rules and regulations.

Manzi explained to Eichler how the voting process goes, in order for her to have her Special Permit granted. Manzi also asked her if she wanted the Board to vote, or did she want this hearing continued. Eichler responded she wanted the Board to vote.

Byers made a motion to close the Hearing.

Cuscia second the motion

All in favor to close the hearing: Manzi, McIntyre, Byers, Koch, and Cuscia.

5-0

Byers made a motion to Grant the Special Permit to allow and construct a family suite at 11 Tyler Road, for Janet Eichler in the R-4 Zoning District from 4.122.22 of the Zoning by laws. Byers referenced all the plans, pages and maps that were in front of him, along with the associated dates and also those who prepared the documents.

Cuscia second the motion

All were in favor to grant the Special Permit: Manzi, Byers, and Cuscia,

Not in favor: McIntyre and Koch

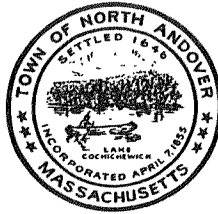
3-2 denied

Manzi suggested to the applicant that she has the right to ask the Board to reconsider the motion.

Janet Eichler wanted the Board to reconsider the motion

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Koch made the motion to reconsider the motion and to continue this hearing in August if the applicant agreed to it McIntyre second the motion to reconsider

All were in favor to reconsider the motion and to reopen this petition till the August meeting (or later), if the applicant agreed: Manzi, McIntyre, Byers, Koch and Cuscia

5-0

Manzi stated let the record reflect this motion was reconsidered.

Manzi requested a short recess and returned back at 8:30.

New Public Hearing

Manzi stated he wanted to go over a few procedural matters with the applicant's for 1600 Osgood Street, before they opened the hearing, regarding what Board's voting members will remain on the Board, if the meeting was to be continued.

Manzi also wanted to inform the applicant that he filed a G.L. c. 268A (disclosure for a notice of a conflict of interest). Manzi stated from the years of 1996 to 2000 he worked for Ozzie Properties. He has no conflicts or financial obligations with Ozzie properties. He then asked if the applicant would like him to recuse himself from this hearing. The applicant said no.

With that being said Rick Byers opened up the public hearing.

**Request for a Findings from the Board appealing a Use Determination made by The Inspector of Buildings relating to an OSGOD Permit Application for Solar Photovoltaic System in the I-2 Zoning District at 1600 Osgood Street (Map 34 Parcel 17)
Petition 2015-003.**

Manzi stated that prior to this meeting he requested some information from the Town Clerk regarding this Overlay District. Manzi spoke of 40A and 40R and how they interplay. Manzi also spoke of how some applications go in front of the Planning Board as of a "Right Use" and some are a "Special Permit Use"

Manzi spoke of the 3 specific overlay Districts on the property in question. Manzi stated that the Overlay Map, Bylaws for this area, along with the appropriate Warrant articles have all been requested to the Town Clerk for the Board's information.

Dan Leary was the first to take to the podium, and he is part of the team who is working on this project. Leary explained briefly the benefits and purpose of Solar Energy to the Board, before the attorney for the project took over.

Atty. Michael D. Rosen, the attorney who is representing the applicant for the Solar Photovoltaic System at 1600 Osgood Street walked up the podium.

Rosen went on to say that he is appealing a Use determination made by the Inspector of Buildings relating to an OSGOD Permit application to the Planning Board to construct a 6 mega watt Rooftop and Parking Canopy

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Mounted Solar Photovoltaic System. The proposed system is to consist of 19,500 Solar Modules; approximately 5,500 rooftop mounted solar modules and approximately 14,000 modules mounted on structures approximately 39 feet wide comprised of approximately 21 rows, ranging between 150-630 feet long. The Use determination is detailed in a letter from the Inspector of Buildings to the Planning Board dated March 24, 2015. The petitioner disagrees with the Inspector of Building's letter, Gerald Brown dated March 24, 2015.

Brown's letter stated the following:

Section 10.1 of the North Andover Zoning Bylaw provides that the Bylaw shall be enforced by the Building Inspector.

Based on my review of the application dated March 20, 2015 for a Special Permit I have determined the following:

1. Section 17.3.2 of the Osgood Smart Growth Overlay District (OSGOD) of the Zoning Bylaw states in part:

"Within the boundaries of the OSGOD, a developer may elect to either develop a site in accordance with the requirements of this Section 17, or to develop a site in accordance with the requirements of the regulations for use, dimension and all other provisions of the Zoning Bylaw governing the underlying zoning districts(s)."

On June 17, 2014 this site (Assessor Map 34, Parcel 17) received approval of a Special Permit under the OSGOD.

2. The solar installation for purpose of a generating facility, which is being applied for here, is not a listed use under the As-Of-Right Uses allowed (As-Of-Right Uses Section 17.6.1.2)

3. Prohibited Uses (Section 17.6.4) states "All uses not expressly allowed are prohibited."

4. In addition, the application states it is for a "manufacturing" use. In my opinion a solar Installation for purposes of a generating facility for some utility users who are not on the site, it is not "manufacturing" under the OSGOD Bylaw

Atty. Rosen submitted a memo dated June 23, 2015 outlining and summarizing five finding requests, also included was the letter from the Building inspector (see above) and a listing of office tenants, the start date, use, size and zones.

Rosen spoke of when they started this project and how they started with the Planning Board. The Planning Board reached out to the Building Inspector for guidance. Since the Building Inspector's letter to the Planning Board was not favorable on this project they are here tonight requesting for this Board to make a finding (or determination) based on Brown's letter. That is why they are here in front of the Board of Appeals.

Rosen and the Board discussed the OSGOD District, Site Plan Review, the I-2 Zoning district, Permits received on the property, Uses, and also if this project is under 40A or 40R and then spoke of various sections of the Bylaws (particularly Section 17).

Rosen felt that there was more than 1 way that this project could be allowed. Rosen also spoke of sites, projects and how he felt that they are defined.

Manzi asked questions to Rosen on what he felt was a "site" or a "project".

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Site plan approvals and Special Permits were discussed with regards to this project.

Rosen stated they just want Site Plan Approval and they are not applying for a Special Permit. Rosen stated Site Plan Approval is to condition and regulate, not to deny. They are not requesting under Section 17.6.1.2 but are looking to be approved under Section 17.6.3.2 (Site Plan Approval).

Rosen stated In the I2 zoning District under Section 4.133 11. B of the Zoning Bylaws you can manufacture, generate and distribute electricity.

Manzi spoke of manufacturing and what would be allowed.

Leary walked back to the podium and stated why this property is the perfect site for this project. He spoke of how the Solar panels work and how these photons are captured and put into a meter.

Manzi asked how the town will benefit.

Leary responded this is a taxable property (pilot opportunity in lieu of taxes); this is a 15 million dollar property, net metering credit agreement to power some of the town's building, and it is a 25 year revenue stream. Leary spoke of the indirect benefits, such as how it will attracts businesses to the area, and most people do like parking under car ports, and how it shows that North Andover is on board with going green.

He stated that some of these solar panels would go on the roof and some would be car ports.

Manzi stated that we will take a short break. The break was over at 9:45.

Eric Kfoury walked up to the podium and explained to the board how there was a time constraint here for the applicant. A "Use" determination was needed to be made, but because it was a "Use" not allowed. Kfoury stated this is not manufacturing, it is Solar Generation, and it is not allowed.

Kfoury stated manufacturing is allowed by right. Kfoury felt that this type of Solar Generation has been prohibited.

Kfoury stated that we did try to help the applicant make a timely appeal.

Manzi asked if there were any court cases that he could cite. Kfoury responded that he could supply that to the Board.

Manzi stated that would help the Board make an informed decision.

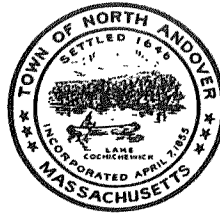
Atty. Rosen cited the case Duseau vs Szawlowski where the court debated Alternative Energy Deployment and Manufacturing. This case was made in January 2015.

Kfoury stated that this is not a cut and dry case. There is much more to it than this.

Rosen, cited Section 4.133 under the I-2 Zone (bylaws) where a minimum of 25 acres are needed. Rosen stated that they are not speaking of the manufacturing of making solar panels, you would not need 25 acres for that, but they are talking about Solar Generation or deployment or the making of electricity. Also "Site" is used in the application to deploy solar panels and thirdly and most important we are talking about the I-2 District.

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Manzi asked the Board and the applicant on continuing till the next meeting, scheduled for August 11th.

Rosen asked to speak to his client on continuing the meeting for August. Rosen and Leary returned back at 10:20 and they both agreed on continuing this hearing till August.

Cuscia made a motion to continue this hearing for August 11th

Koch second the motion

Those in favor to continue the hearing for August 11th: Manzi, McIntyre, Koch, Cuscia and Ludgin.

Miscellaneous Correspondence

A letter were received from CHAPA, dated May 19th, 2015, signed by Senior Program Manager, Elizabeth Palma-Diaz, regarding a current owner's intent to sell off his or her affordable unit.

Adjournment: 10:30

Koch made a motion to adjourn the meeting.

Byers second the motion

All were in favor to adjourn the meeting: Manzi, McIntyre, Byers, Koch, Cuscia, Ludgin and Morganthal.